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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,775	02/06/2002	Scott Kinhead	15870/112	7557

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EXAMINER

BUI, THACH H

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 02/04/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/068,775

Applicant(s)

KINKEAD ET AL.

Examiner

Thach H Bui

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19 is/are allowed.
- 6) ☒ Claim(s) 1,9,14,20 and 25 is/are rejected.
- 7) ☒ Claim(s) 2-8,10-13 and 21-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. Applicant's prior art citation filed April 18, 2002 has been received, considered and placed of record.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite because "the circular disk being generally perpendicular to the vertical axis and including a top" recited in lines 5-6, renders the claim unclear. Is it "the circular disk being generally perpendicular to the vertical axis and including a top dresser, 10"?

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 9, 14, 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinkead et al. (U.S. Patent No. 6,149,079) in view of Clarke (U.S. Patent No. 4,591,102).

Kinkead et al. teach a top dresser (10) for dispensing the material to a surface comprising a hopper having a bottom and a back (30) for containing top dressing material and movably supported relative to the surface, a conveyor (140), a gate (72) moveable relative to the opening and adjustable in a first range of spacings from the conveyor and adjustable in a second range of spacings from the conveyor different than the first range of spacings (col. 3, lines 63-67), and at least a spinner (54) rotatable about a vertical axis in a rotation direction, with the spinner including a circular disk of a diameter having a center corresponding to the vertical axis (see Fig. 1). The circular is being generally perpendicular to the vertical axis and including a top i.e. top dresser (10), with the spinner further includes a plurality of fins on the top of the circular disk and in a radial orientation (indicated as A) (see Fig 2). The spinner (54) is being movable along the surface in an operation direction generally perpendicular to the vertical axis and with the circular disk being generally parallel to the surface with top dressing material being dispersed from the hopper (30) on top of the circular disk at an infeed radial position (see Fig. 1). Kinkead et al. have all the features of the invention but Kinkead et al. failed to teach a diverter. Clarke teaches a diverter (17) located in the rotation direction past and/or below the infeed radial position and the diverter has a forward end spaced from the circular disk and located intermediate and/or below the infeed radial position and the rearward extent of the circular disk in the operational

direction (16); the diverter includes an edge (indicated as A) (see fig. 1) extending at different distances into the thickness of the propelled top dressing material. It would have been obvious to one having ordinary skills in the art at the time the invention was made to modify the teachings of Kinkead et al. and combine with Clarke to have a spreading apparatus with a diverter for spreading the material onto a surface. Methods follow by apparatus.

#### ***Allowable Subject Matter***

4. Claims 2-8, 10-13, and 21-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. Claims 15-19 are allowed.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thach H Bui whose telephone number is 703-305-0063. The examiner can normally be reached on Monday-Friday, 7:30-4 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 703-308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3752

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Thach H. Bui', with a stylized, flowing script.

Thach H. Bui  
Patent Examiner  
AU3752